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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 130927853-3853-01]

RIN 0694 – AF99

Amendments to Existing Validated End-User Authorizations in the People’s Republic of China

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise existing authorizations for Validated End-Users (VEUs) Samsung China Semiconductor Co. Ltd. (Samsung China), Semiconductor Manufacturing International Corporation (SMIC), SK hynix Semiconductor (China) Ltd. (SK hynix China) and SK hynix Semiconductor (Wuxi) Ltd. (SK hynix Wuxi) (collectively “SK hynix”) in the People’s Republic of China (PRC). Specifically, BIS amends Supplement No. 7 to part 748 of the EAR to add two items and remove one item from the list of eligible items for VEU Samsung China, add a facility to the list of eligible destinations and two items to the list of eligible items for VEU SMIC, and update the addresses of the facilities used by VEU SK hynix China and VEU SK hynix Wuxi.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230; by telephone: (202) 482-5991, fax: (202) 482-3991, or e-mail: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated End-Users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the dates they were so designated, and their respective eligible destinations and items are identified in Supplement No. 7 to part 748 of the Export Administration Regulations (EAR). Under the terms described in that supplement, VEUs may obtain eligible items without an export license from the Bureau of Industry and Security (BIS), in conformity with section 748.15 of the EAR. Eligible items vary between VEUs, but may include commodities, software, and technology, except those controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for

administering the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646) to create Authorization VEU.

Amendments to Existing Validated End-User Authorizations in the People's Republic of China (PRC)

Revisions to the List of "Eligible Items (By ECCN)" for Validated End-User Samsung China Semiconductor Co. Ltd (Samsung China)

This final rule amends Supplement No. 7 to part 748 of the EAR to add Export Control Classification Numbers (ECCNs) 2B350.i.3 and 3A233 to the list of items that may be exported, reexported or transferred (in-country) to Samsung China's facility in the PRC under Authorization VEU. BIS also removes ECCN 2B350.i.4 from Samsung China's list of approved items. BIS makes these changes pursuant to requests from Samsung China. BIS added Samsung China as a VEU in Supplement No. 7 to part 748 in a rule published in the *Federal Register* on July 10, 2013 (78 FR 41291).

Eligible Items (by ECCN) That May Be Exported, Reexported or Transferred (In-Country) to the Eligible Destination Identified Under Samsung China Semiconductor Co. Ltd.'s Validated End-User Authorization:

ECCNs 1C350.c.3, 1C350.d.7, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.3, 3A233, 3B001.a.1, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 3D002, and 3E001 (limited to "technology" for items classified under 3C002 and 3C004 and "technology" for use consistent with the International Technology Roadmap for Semiconductors process for items classified under ECCNs 3B001 and 3B002).

Revisions to the List of “Eligible Destinations” and “Eligible Items (By ECCN)” for Validated End-User Semiconductor Manufacturing International Corporation (SMIC)

This final rule also amends Supplement No. 7 to part 748 of the EAR to add a facility to the list of SMIC facilities to which eligible items may be exported, reexported or transferred (in-country) using Authorization VEU, to bring the number of SMIC’s VEU-authorized facilities in the PRC to a total of four. BIS also adds two ECCNs to SMIC’s list of eligible items that may be sent to the four facilities. The ECCNs added in this rule to SMIC’s VEU authorization are ECCNs 2B350.d.3 and 3C003. BIS makes these changes pursuant to requests from SMIC.

Additional SMIC Destination:

Semiconductor Manufacturing International (Shenzhen) Corporation
Qier Road, Export Processing Zone
Pingshan New Area,
Shenzhen, China 518118

Eligible Items (by ECCN) That May Be Exported, Reexported or Transferred (In-Country) to the Eligible Destination Identified Under Semiconductor Manufacturing International Corporation Validated End-User Authorization:

ECCNs 1C350.c.3, 1C350.d.7, 2B006.b.1, 2B230, 2B350.d.2, 2B350.d.3, 2B350.g.3, 2B350.i.3, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3C003, 3C004, 5B002, and 5E002 (limited to “technology” according to the General Technology Note for the “production” of integrated circuits controlled by ECCN 5A002 that have been classified by BIS as eligible for License Exception ENC under paragraph (b)(2) or (b)(3) of section 740.17 of the EAR, or classified by BIS as a mass market item under paragraph (b)(3) of section 748.15 of the EAR).

Change of Address Name of the Facility for Validated End-Users SK hynix Semiconductor (China) Ltd. and SK hynix Semiconductor (Wuxi) Ltd.

Finally, in this rule, BIS amends Supplement No. 7 to part 748 to make a technical change by updating the facility address names for existing VEU’s SK hynix in the PRC.

Although the actual location of the facilities for these VEUs has not changed, the technology park where the VEUs are located recently changed its name and this amendment reflects that change and also indicates the specific lot in which each VEU is located.

Prior Address Name for SK hynix China:

Lot K7/K7-1, Export Processing Zone
Wuxi, Jiangsu, China 214028

New Address Name for SK hynix China:

Lot K7, Wuxi High-tech Zone Comprehensive Bonded Zone
Wuxi New District, Jiangsu Province, China 214028

Prior Address Name for SK hynix Wuxi:

Lot K7/K7-1, Export Processing Zone
Wuxi, Jiangsu, China 214028

New Address Name for SK hynix Wuxi:

Lot K7-1, Wuxi High-tech Zone Comprehensive Bonded Zone
Wuxi New District, Jiangsu Province, China 214028

Authorization VEU eliminates the burden on exporters and reexporters of preparing individual license applications because the export, reexport and transfer (in-country) of the eligible items specified for each VEU may be made under general authorization instead of under individual licenses. With the addition of items for Samsung China and the addition of items and a facility for SMIC, exporters and reexporters can supply items much more quickly, thus enhancing the competitiveness of both the VEU and its suppliers of U.S-origin items. In addition, the update of the facility addresses for existing VEUs SK hynix reinforces the reliability of information that facilitates legitimate trade that exporters and reexporters conduct under Authorization VEU.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended most recently by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS-748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number

0694-0088 are not expected to increase significantly as a result of this rule.

Notwithstanding any other provisions of law, no person is required to respond to, nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary. In determining whether to grant VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2).

The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy. In publishing this final rule, BIS adds an eligible destination to an existing VEU, updates the address name of two others, and makes changes to the list of eligible items for VEU Samsung and VEU SMIC. These changes have been made within the established regulatory framework of the Authorization

VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorizations granted in the rule are consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. In addition, as with license applications, VEU authorization applications contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such applications. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments, allowing additional public comment on this amendment to individual VEU authorizations, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the *Federal Register*. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. BIS is simply amending the list of VEU authorizations by adding a new end user, consistent with established objectives and parameters administered and enforced by the

responsible designated departmental representatives to the End-User Review Committee. Delaying this action's effectiveness could cause confusion with the new VEU status as determined by those authorized government representatives and stifle the ongoing purpose of the VEU Authorization Program. Accordingly, it is contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 748 of the EAR (15 CFR parts 730 – 774) is amended as follows:

PART 748 – [AMENDED]

1. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

2. Amend Supplement No. 7 to part 748 by:

a. Revising the Export Control Classification Numbers in the “Eligible items (by ECCN)” column for Validated End-User “Samsung China Semiconductor Co. Ltd.” in “China, (People’s Republic of)”;

b. Revising the list of facilities in the “Eligible destination” column and items in the “Eligible items (by ECCN)” column for Validated End-User Semiconductor Manufacturing International Corporation” in “China, (People’s Republic of)”;

c. Revising the address of the facility that appears in the “Eligible destination” column for both Validated End-Users “SK hynix Semiconductor (China) Ltd.” and “SK hynix Semiconductor (Wuxi) Ltd.” in “China, (People’s Republic of)”.

The revisions read as follows:

SUPPLEMENT NO. 7 TO PART 748 - AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
*	*	* *	* *	*
	Samsung China Semiconductor Co. Ltd.	1C350.c.3, 1C350.d.7, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.3, 3A233, 3B001.a.1, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 3D002, and 3E001 (limited to “technology” for items classified under 3C002 and 3C004 and “technology” for use consistent with the International Technology Roadmap for Semiconductors process for items classified under ECCNs 3B001 and 3B002).	Samsung China Semiconductor Co. Ltd. Xinglong Street, Chang’an District Xi’an, People’s Republic of China 710065.	78 FR 41291, 7/10/13. 78 FR [INSERT PAGE NUMBER], [INSERT DATE OF PUBLICATI ON].
	Semiconductor Manufacturing International Corporation	1C350.c.3, 1C350.d.7, 2B006.b.1, 2B230, 2B350.d.2, 2B350.d.3, 2B350.g.3, 2B350.i.3, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3C003, 3C004, 5B002, and 5E002 (limited to “technology” according to the General Technology Note for the “production” of integrated circuits controlled by ECCN 5A002 that have been classified by BIS as eligible for License Exception ENC under paragraph (b)(2) or (b)(3) of	Semiconductor Manufacturing International (Shanghai) Corporation 18 Zhang Jiang Rd., Pudong New Area Shanghai, China 201203.	72 FR 59164, 10/19/07. 75 FR 67029, 11/1/10.
			Semiconductor Manufacturing International (Tianjin) Corporation 19 Xing Hua Avenue Xi Qing Economic Development Area Tianjin, China 300385.	77 FR 10953, 2/24/12. 78 FR [INSERT PAGE NUMBER], [INSERT DATE OF
			Semiconductor Manufacturing International (Beijing) Corporation, No. 18 Wen Chang Road	

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
		section 740.17 of the EAR, or classified by BIS as a mass market item under paragraph (b)(3) of section 748.15 of the EAR).	Beijing Economic-Technological Development Area Beijing, China 100176.	PUBLICATI ON].
			Semiconductor Manufacturing International (Shenzhen) Corporation Qier Road, Export Processing Zone Pingshan New Area, Shenzhen, China 518118.	
	*	* *	* *	*
	SK hynix Semiconductor (China) Ltd.	3B001.a, 3B001.b, 3B001.c, 3B001.e, and 3B001.f.	SK hynix Semiconductor (China) Ltd. Lot K7, Wuxi High-tech Zone Comprehensive Bonded Zone Wuxi New District, Jiangsu Province, China 214028.	75 FR 62462, 10/12/10. 77 FR 40258, 7/9/12. 78 FR 3319, 1/16/13. 78 FR [INSERT PAGE NUMBER], [INSERT DATE OF PUBLICATI ON].

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
	SK hynix Semiconductor (Wuxi) Ltd.	3B001.a, 3B001.b, 3B001.c, 3B001.e, and 3B001.f.	SK hynix Semiconductor (Wuxi) Ltd., Lot K7-1, Wuxi High-tech Zone Comprehensive Bonded Zone Wuxi New District, Jiangsu Province, China 214028.	75 FR 62462, 10/12/10. 77 FR 40258, 7/9/12. 78 FR 3319, 1/16/13. 78 FR [INSERT PAGE NUMBER], [INSERT DATE OF PUBLICATI ON].
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DATED: November 14, 2013

Kevin J. Wolf

Assistant Secretary for Export Administration

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